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EXAMINER

STERRETT, JONATHAN G

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/973,430		HANCOCK ET AL.	
	Examiner		Art Unit	
	Jonathan G. Sterrett		3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Summary

1. This **Final Office Action** is responsive to applicant's amendment filed March 7, 2006. Applicant's amendment of March 7, 2006 amended **Claims 2-8, 10, 12, 13-17 and 20**. Currently **Claims 1-20** are pending.

Response to Arguments

2. The applicant argues that Kinra does not teach "collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers".

The examiner respectfully disagrees.

As noted in the office action, the rejection of Claim 1 was a 103(a) obviousness type rejection over the cited reference of Kinra.

Kinra teaches "collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples". As the applicant's cited in column 3 line 9-11, the software is evaluated by having a score assigned to a particular performance capability of the software. The software being evaluated is a particular product. Evaluating this product by assigning scores to rate various functions of the software with respect to the software's particular performance in that area and collecting this data is collecting performance parameter values, since the scores rate the performance of a particular function. Furthermore, various functions of the same product are evaluated (i.e. tested) so that multiple sets of performance parameter values are collected from the same product.

In further response to applicant's arguments, the recitation "provided to a purchasing entity by multiple independent suppliers" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Furthermore, the examiner disagrees that an assumption has been made that the claim cites 'providing evaluations or product samples at test facilities of each of the suppliers', when cited art, as discussed above, demonstrates that it fully meets the claim limitations.

3. The applicant argues that there is no motivation to combine Kinra and the Official Notice,

The examiner respectfully disagrees.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kinra teaches that software may be sourced from different vendors. Because the supplying vendors are all different and provide different products, issues with quality control result in various performance issues that ensure in integrating those software products into a computing system (see column 1 line 10-15). The different vendors provide different levels of technical support. The vendors are of varying stability and vary with respect to compliance with standards. Kinra's invention is designed to solve this problem by providing a standard test to be applied to those different software products to evaluate and compare the performance of these products. The evaluation is designed specifically to gather performance parameters as to various related attributes of how they perform in a host computing system. Kinra does not explicitly teach providing testing in each of the suppliers as per the claim limitation "at test facilities of each of the suppliers".

The Official Notice is that it is old and well known in the art of supply chain management to have test facilities at each suppliers so that qualification of components (i.e. so that the components are determined to be of a certain predetermined standard) occurs prior to shipment (i.e. products that are bad or are of insufficient standards are not shipped from a supplier to the customer). Since Kinra acknowledges that suppliers provide product that needs to have a standard test applied for evaluation and scoring of performance parameters, one of ordinary skill in the art of supply chain management at the time of the invention would find it obvious to modify Kinra's teaching to include

performing his testing, evaluating and scoring of product performance parameters at the suppliers because it would prevent defective product from being shipped to a customer.

4. The applicant argues that Kinra's teachings do not address 'performance parameters' and do "not provide any basis for concluding that the user's responses to the statements relating to features and functions in a software product are performance parameter values".

The examiner respectfully disagrees.

The specification of the instant application does not provide a definitive definition for what exactly 'performance parameters' are. The examiner is interpreting 'performance parameters' to mean parameters that measure or indicate some level, or proficiency of performance. Kinrah clearly teaches that the scores assigned to evaluations of software are measurements, or parameters of those characteristics. These scores represent the capacity of the software to performance a given function and therefore meet the claim limitation of "performance parameters".

Kinra notes that one of the problems that his invention is designed to solve is providing a system for evaluating and comparing software products. Kinra addresses fill the need of providing a standardized comparison across software products, (see column 1 line 54-56). He teaches generating and using performance parameter values so a numerical comparison can be made between different software products.

5. The applicant argues that there is no motivation to combine the Official Notice and Kinra reference to address Claim 2.

The examiner respectfully disagrees

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kinra is addressing the difficulties in procuring different software packages that are all candidates to run on a computer system. His solution is a way to provide for a standardized approach that provides measurable and repeatable results for evaluating software.

The Official Notice in Claim 2 notes that in supply chain management (i.e. the practice of supply chain management includes the purchasing of a product to be used by the purchaser as an element in the purchaser's own product), it is old and well known to test materials at suppliers, i.e. to prequalify the material prior to it being shipped. This is done so that raw material from suppliers is known to be of acceptable quality, once it is received on site. Otherwise it would have to be shipped back to the supplier for correction, a waste of time and money. A practitioner of ordinary skill in the art of supply chain management would be motivated to modify Kinra to include testing

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and evaluating product at the suppliers, because it would ensure the product was of adequate quality before it was shipped to the customer.

6. The applicant argues that Kinra does not teach the purchasing entity controlling the product samples.

The examiner respectfully disagrees.

Kinra teaches that access to system for performing the evaluation can be controlled so that access to the testing is restricted to certain personnel (Kinra gives an example where certain technical expertise required by certain users to be qualified to enter data); see column 6 line 50-55.

The applicant states that Kinra does not perform testing on software products. However, Kinra does teach this – see column 3 line 9-11. These scores provide evaluation (i.e. testing) that represent the capacity of the software to perform (i.e. performance) a function. Evaluation is defined by Merriam Webster's Collegiate Dictionary as "to determine or fix the value of". Testing is defined by Webster's as "to be assigned a standing or evaluation on the basis of tests". Kinra thus teaches performing testing to determine the performance parameters for software.

7. The applicant argues that Kinra does not teach the purchasing entity controlling the product samples during testing at the test facilities of the suppliers.

The examiner respectfully disagrees.

As noted in claim 1, the combination of Official Notice and Kinra notes that locating the testing at each of the suppliers provides for improved product quality when that product is shipped because the testing occurs at the supplier. Kinra further teaches as discussed above how controlling the testing is necessary to ensure that the right person is performing the test, because they have the prerequisite technical expertise. The combination of Kinra and the Official Notice fully meet the claim limitations because one of ordinary skill in the art would locate testing facilities at each of the clients and would control the product samples during testing because it would ensure product quality was acceptable before shipping to customers and would ensure that the test results were valid because the person performing the tests had the prerequisite expertise to ensure a meaningful result.

8. The applicant argues that Kinra and Schoneker fail to teach the limitations of Claim 5.

The examiner respectfully disagrees.

As noted above, Kinra and Official Notice established the supply chain benefit of performing testing at suppliers, from a material qualification standpoint, to ensure a quality raw material or input product is sent to the customer. One of ordinary skill in the art at the time of the invention would be motivated to locate the testing, controlling of testing and maintaining custody of product samples at the supplier to realize the benefits as noted in the Official Notice above of locating the testing at the supplier. Schoneker also teaches that product quality is crucial when sourcing a product. On

page 2, Schoneker notes that the lack of control for a sourced raw material resulting in substandard material being used in a product. Schoneker teaches that control of product quality is important in ensuring that products perform as they are designed to do. Schoneker also teaches that supplier tests should be evaluated and checked since the supplier's COA should be the same as the customer's COA for a given sample. Schoneker notes that the supplier "must use equivalent methodology and equipment for the analytical evaluation" (page 5 para 3). Schoneker teaches that sometimes suppliers are not under original manufacturer control, or that the control from the OEM is inadequate. This suggests that adequate standards are not in place to ensure that product is not contaminated or misplaced during testing, and that repeatable, standard tests are applied. In light of Schoneker's and Kinra's teachings, one of ordinary skill in the art would be motivated to maintain custody over product samples so that adequate controls were in place to ensure a repeatable, accurate test result, to ultimately ensure that a quality product is shipped from the supplier.

9. The applicant argues that Kinra and Stewart would not be combined to meet the limitations of Claims 6 and 7.

The examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kinra teaches that users are evaluating software according to various aspects. Because users are evaluating these aspects in accordance with applying scores (see column 3 line 13-15) to score the performance parameters of the product, one of ordinary skill in the art would recognize that there is some subjectivity in providing the performance parameters (e.g. a 0 to 5 scale may be used).

Stewart teaches removing product identification to eliminate any personal bias a user may have associated with a brand name. (The examiner notes that the Stewart article discusses the Consumer Reports testing methodology where a very wide variety of products are tested, besides cookies and perfume, including software and other sophisticated consumer products.)

One of ordinary skill in the art at the time of the invention would be motivated to modify Kinra's performance parameter testing methodology to include removing identification information from the product, to remove bias and achieve a more objective result.

10. The applicant argues that Kinra and PMG would not be combined to meet the limitations of Claims 11-14 and 20.

The examiner respectfully disagrees. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the

prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Kinra suggests that his invention is an improvement over a “smattering of benchmark tests” (column 1 line 20) and thus suggests, since he is providing a standardized method for evaluation, that he is providing a way to benchmark, or compare, products against each other, using a standardized approach. Benchmarking, as it is known in the art, is a way to provide a comparison so that a product's capability can be compared against some known metric and be compared against other products.

PMG discloses a benchmarking service, that is, a service that is provided so that companies can submit data and receiving comparative reports to gauge their company's performance with other companies in their industry group. The data is provided to companies in such a way that each individual company can compare themselves against the group, without seeing detailed data from the other companies. PMG teaches that confidentiality of data is provided, because the data being submitted relates to internal company performance data, and is thus sensitive. This provides a way to obtain a benchmarking comparison using otherwise confidential data from companies because the actual data for any given company is not revealed to another; and yet; this also provides a way for PMG to provide a valuable service in that while confidentiality is maintained, an individual company can obtain a meaningful

comparison, or benchmark, of its own performance. PMG and Kinra are analogous art since they both address how to obtain, process, and analyze data that relates to benchmarking, or comparing performance.

One of ordinary skill in the art would find sufficient motivation to modify Kinra's teachings to provide data to individual companies regarding a comparison of their product's performance with that of other similar companies, in such a way as to preserve the identity of the other companies being compared against.

11. The applicant argues that the examiner is using hindsight reasoning to meet the limitations of Claims 11-14 and 20.

The examiner respectfully disagrees.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

12. The applicant argues that Kinra and GP10 would not be combined to meet the limitations of Claims 15 and 16.

The examiner respectfully disagrees.

Kinra teaches obtaining performance parameter values, as discussed above.

These performance parameter values are evaluations of software product features where the performance of the software is scored with respect to various performance attributes (i.e. performance parameters). As also discussed above, the official notice combined with Kinra teaches having test facilities at each of the suppliers. Kinra teaches a data structure that compiles product information and performance parameters so that comparisons can be made among different projects. Kinra's data structure provides for a comparison between products so that the parameter test results can be compared from one product to another. Kinra's teachings address providing standardization in the art of supply-chain management, specifically procurement, so that different software products to be procured can have a consistent performance parameter testing methodology and results. GP10 also addresses the art of procurement in supply chain management (i.e. GP10 and Kinra are analogous art). GP10 teaches that suppliers who are testing samples for General Motors (i.e. a supply chain customer) have to provide information that describes how test procedures are repeatable, precise and accurate (see page 6, item 6a). GP10 further teaches that GM requires documentation (i.e. a data structure) that correlates test information with specific product samples for traceability. This means that if the product sample later causes problems after being integrated into a GM product, the traceability provides documentation (i.e. a data structure that correlates the particular product sample with the supplier and the particular supplier test facility) so that it is known which supplier test

facility is responsible for testing and evaluating the performance parameter of that product as meeting acceptable quality standards for GM.

One of ordinary skill in the art at the time of the invention would find motivation to combine Kinra and GP10 to fully meet the claim limitations of Claim 15 and 16, because it would provide traceability to the supplier providing the testing of product to be used by a customer (in this case the customer is GM) by modifying the data structure of Kinra as discussed above to meet the limitations of Claim 15.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 1-4, 8-10 and 17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991**.

Regarding **Claim 1**, Kinra teaches:

collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples

Column 5 line 6-8, criterion scores (i.e. multiple sets of performance parameter values are collected) are collected by the computer memory. These scores correspond to the results of testing of product samples. –see also column 9 line 42-45.

generating an evaluation report based upon the multiple sets of performance parameter values.

Column 10 line 11-16, an evaluation screen (i.e. report) is generated based upon evaluation product data, criteria, categories or sections (i.e. multiple sets of performance parameter values).

Kinra does not teach:

at test facilities of each of the suppliers;

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Testing and evaluation of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 2**, Kinra teaches:

wherein the collecting comprises testing each of the product samples

column 4 line 17, management of test cases/scripts comprises testing the product samples in terms of how they handled the test cases/scripts.

Kinra does not teach:

at the test facilities of each of the suppliers;

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Prequalification of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

Regarding **Claim 3**, Kinra teaches:

wherein testing comprises controlling the product samples during the testing.

Column 6 line 62-63, access to testing for each of the product samples can be designated (i.e. controlling access to testing of samples – see also column 6 line 59-61).

Kinra does not teach where the controlling is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products including during testing at the test facilities of suppliers. The direction and control of testing products by the purchasing entity ensures that standards and criteria of the purchasing entity are being measured against during the test to ensure an appropriate buying decision.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the testing is controlled by the purchasing entity, because it would ensure products are properly qualified/disqualified according the purchasing entity's standards prior to the buying decision .

Regarding **Claim 4**, Kinra teaches:

Wherein the testing comprises the purchasing entity preventing unauthorized access to the product samples during the testing at the test facilities of each of the suppliers.

Column 6 line 59-61, a system user can prevent unauthorized access to product samples during testing. Kinra teaches that the system can provide this functionality to ensure that users evaluate the product only in their particular area of expertise.

Kinra does not teach where the preventing of unauthorized access is provided by the purchasing entity. However, official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products, including unauthorized access to product samples.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the purchasing entity prevents unauthorized access to product samples, because it would ensure product features are properly evaluated by those having the requisite experience to provide the evaluation.

Regarding **Claim 8**, Kinra teaches:

Testing each of the product samples at test facilities of each of the suppliers under substantially similar test conditions.

Column 1 line 50-55, product evaluation is conducted according to a standardized scheme (i.e. substantially similar test conditions).

Column 8 line 25-29, product scores are compared according to the same criteria.

Official Notice is also taken that it is old and well known in the art of measurement to test product samples according to substantially similar test conditions so that meaningful comparisons can be made. Otherwise, if the test conditions are substantially different, then an invalid comparison would be made.

Regarding **Claim 9**, Kinra teaches:

analyzing the multiple sets of performance parameters.

Column 8 line 1-10, providing a bar chart with comparative values of two different products in a single category (See Figure 2 108b & #82) provides for analyzing multiple sets of performance parameters. In this example the analysis provided by the bar charts indicates that one product is stronger in configuration management. Figure 2 includes many similar analyses of multiple sets of performance parameters.

Regarding **Claim 10**, Kinra teaches:

compiling a single consistent set of performance parameter values from the multiple sets of performance parameter values.

Column 8 line 54-57, normalized criterion score in the prototyping and simulation criterion is provided at the end of each of the product 1 and product 2 value columns. See also Figure 2 #122 and 111 for the compiled single consistent set of performance parameter values.

Claims 17-19 recite similar limitations as those recited in **Claims 1-4 and 8-10** above, and are therefore rejected under the same rationale.

15. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Schoneker**.

Schoneker, David R; "Changing the supply-chain controls for excipients—Part 1: The IPEC-Americas 'Certificate of Analysis guide for bulk pharmaceutical excipients'", June 2000, Pharmaceutical Technology, Vol. 24, Iss. 6, p.42, ProQuest ID 55656380.

Regarding **Claim 5**, Kinra teaches controlling access to the evaluation of product samples, as per claim 4 above but does not teach:

wherein the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers.

Schoneker teaches:

wherein the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers.

Page 4 paragraph 1 line 1-4, the user of material from a supplier (i.e. the purchasing entity) conducts their own tests on material provided by the supplier to establish the reliability of the supplier's COA's. This would require the purchasing entity maintaining custody of the product samples during testing (rather than the supplier, since it is the supplier's own COA results that are being verified).

Schoneker further teaches that this step is necessary to ensure the supplied material meets specifications (line 4 of paragraph 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of where the purchasing entity maintains custody of the product samples during testing, because it would ensure that the supplied material met the specifications of the purchasing entity.

16. **Claims 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **Stewart**.

Stewart, Doug; "Suspicious for a living / behind the scenes with bumper bashers, dishwasher debunkers, chocolate chip chompers and condom demolition experts – the folks who test products for Consumer Reports", Oct 1993, San Francisco Chronicle, Calif; p.7.Z.1, ProQuest ID 67113483.

Regarding **Claim 6**, Kinra does not teach:

further comprising removing identification information from the product samples before the testing at the test facilities of each of the suppliers.

Stewart teaches:

further comprising removing identification information from the product samples before the testing at the test facilities of each of the suppliers.

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this example, a number "28" is assigned to a cookie being tested.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

Regarding **Claim 7**, Kinra does not teach:

wherein the removing comprises removing from each of the products any information from which the corresponding supplier of the product is identifiable.

Stewart teaches:

wherein the removing comprises removing from each of the products any information from which the corresponding supplier of the product is identifiable.

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated. This blind testing includes not only the removal of product identification, but also supplier identification.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this case, a number "28" is assigned. This blind testing includes not only the removal of product identification, but also supplier identification.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product and supplier identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

17. **Claims 11-14 and 20** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of the **Performance Measurement Group** (hereinafter **PMG**).

"Welcome to the Performance Measurement Group, LLC",
www.pmgbenchmarking.com, web.archive.org webpage of October 6, 2000, pp.1-4,
web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps_pdbb_faq.html.

Regarding **Claim 11**, Kinra does not teach:

transmitting the evaluation report to one or more of the suppliers.

PMG teaches:

transmitting the evaluation report to one or more of the suppliers.

Page 2 paragraph 7 line 1-5, subscribers can access the benchmarking system to access the system.

Page 2 paragraph 5 line, mini-presentations summarize the benchmarking results and comprise a report that is downloaded (i.e. transmitting).

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of transmitting this report to one or more of the suppliers, as taught by PMG, because it would allow suppliers to benchmark their performance against that of other suppliers.

Regarding **Claim 12**, Kinra does not teach:

collecting a fee from a given one of the suppliers before transmitting the evaluation report to the given supplier.

PMG teaches:

collecting a fee from a given supplier before transmitting the evaluation report to the given supplier.

Page 2 paragraph 6 line 1-2, subscriptions (i.e. paying a fee that is collected) are sold for companies to buy the benchmarking services.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 13**, Kinra teaches providing comparison (i.e. benchmarking) of product samples that are received from suppliers (Column 6 line 7-15) but does not teach:

customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance without identifying other suppliers.

PMG teaches:

customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance without identifying other suppliers.

Page 3 paragraph 2 line 2-6, the identity of other suppliers is removed so that company-specific data is not revealed. This ensures confidentiality for companies wishing to participate in the benchmarking study.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the

step of collecting a fee from the supplier, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers.

Regarding **Claim 14**, Kinra does not teach:

Wherein the customizing comprises encoding identification information of all the suppliers other than the respective supplier receiving the customized evaluation report.

PMG teaches:

Wherein the customizing comprises encoding identification information of all the suppliers other than the respective supplier receiving the customized evaluation report.

Page 2 paragraph 5 line 3-5, evaluation reports are customized for individual suppliers and provide a comparison of the supplier to average and best-in-class (BIC) for a particular metric. The BIC metric does not identify the supplier, only what the metric value is.

Page 3 paragraph 2 line 2-4, company data is kept proprietary by only showing metrics in aggregate, other than for BIC and avg. metrics, as discussed above.

The confidentiality taught by PMG encourages companies to participate in the benchmarking. Official Notice is taken that it is old and well known in the art of management that company data that reflects internal performance is considered

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sensitive and proprietary. The comparison between a company's data and that of the aggregate (i.e. average and as well BIC), provides for the company to compare itself to the industry group as a whole for the purpose of knowing where weaknesses lie.

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of customizing the report to ensuring confidentiality of suppliers, as taught by PMG, because it would allow suppliers to receive benchmarking reports to compare their performance against that of other suppliers and maintain confidentiality of the suppliers' data.

Claim 20 recites similar limitations as those recited in **Claims 11-14** above, and is therefore rejected under the same rationale.

18. **Claims 15 and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kinra US 5,731,991** in view of **General Motors Supplier Development General Procedure "Evaluation and Accreditation of Supplier Test Facilities GP10"** (hereinafter **GP10**).

"General Motors Supplier Development – General Procedure: Evaluation and Accreditation of Supplier Test Facilities GP10", Published by GM's Supplier Development Administration, GM1796, February 1990, pp.1-19.

Regarding **Claim 15**, Kinra teaches compiling a data structure relating parameter values for each product sample and providing an evaluation report that provides a comparison of product samples (Column 6 line 7-15 and Figure 2) but does not teach:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample.

GP10 teaches:

wherein the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each product sample.

Page 17 Item B No. 5, product samples are identified and reports identifying the product samples are traced (i.e. tracked and recorded).

Page 5, GP10 teaches that each facility is recorded and qualified as a supplier test facility. Standards are applied to these test facilities to ensure that different test facilities provide as repeatable measurements across these different test facilities as possible (see also page 6 Item 6a where qualification of test equipment is discussed).

Both GP10 and Kinra address product sample evaluation, thus both GP10 and Kinra are analogous art.

GP10 teaches maintaining records and ensuring qualification for supplier test facilities is necessary to ensure traceability for supplier test results (page 17 Item B No. 5).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of including supplier test facility data for individual test samples, as taught by GP10, because it would provide traceability for the test results provided for product samples.

Regarding **Claim 16**, Kinra teaches:

wherein the generating comprises producing a graph displaying one or more performance parameter values for each of the product samples.

Column 6 line 7-15, the screen generator produces a comparison graph the displays a performance parameter value for two different products so that a comparison can be made graphically of the two products.

Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Francis, Bob; "Meeting Dell's Challenge", Dec. 15, 1997, InformationWeek, Manhasset; p.18, 2 pages.

Rebecca Henderson, Jesus Del Alamo, Todd Becker, James Lawton, et al.; "The perils of excellence: Barriers to effective process improvement in product-driven firms", Spring 1998, Production and Operations Management. Muncie:. Vol. 7, Iss. 1; p. 2 (17 pages)

Technology Writers; "HP and IMS Form Alliance to Deliver Virtual-Test Tools For Use with HP Semiconductor Test Systems", Business Wire. New York: Jun 30, 1999. p. 1.

Jeff Dorsch, "The test floor", Nov 15, 1999, Electronic News. New York:. Vol. 45, Iss. 46; p. 34 (1 page).

M2 Presswire, "HEWLETT-PACKARD: HP and Matrox team up to ensure maximum PC stability for corporate customers", Coventry: Dec 8, 1999. p. 1.

Mary Slepicka, "Testing at the speed of light", Jul 15, 1999, America's Network. Duluth:. Vol. 103, Iss. 11; p. 44 (1 page).

Lonsdale, Chris, "Effectively managing vertical supply relationships: a risk management model for outsourcing", 1999, Supply-Chain Management, Vol. 4, Iss. 4, p.176. ProQuest ID 86923251.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 571-272-6881. The examiner can normally be reached on 8-6.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS

JGS 5-15-2006


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